

¹ 5 U.S.C. § 8101 *et seq.*

employment-related noise exposure. He described his employment as a mobile equipment repairer which entailed working on army vehicles exposing him to noise of 85 decibels (dB) or above. Appellant further explained that he was exposed to loud noise from disassembling different types of tanks, metal, and the use of impact wrenches. He first became aware of his illness on January 6, 2011 and of its relationship to his employment on June 17, 2015.

By letter dated September 4, 2015, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment, and all nonoccupational exposure to noise. OWCP requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, and whether he wore ear protection.

In a July 29, 2015 hearing loss questionnaire, appellant reported that from February 23, 2004 through November 4, 2012 he worked as a heavy mobile equipment repairer where he was exposed to noise from hammers, chisels, impact wrenches, slings, cleaners, and job booms. From November 4, 2012 to the present, he worked as a crane operator with noise exposure to overhead bridge cranes. Appellant reported having worn ear protection beginning February 23, 2014 which was currently required by his position. He noted no other exposure to noise other than cutting grass. Appellant described his injury noting vertigo, dizziness, headaches, ear popping, and ringing in the ears.

An official position description and notification of personnel action (SF-50) forms was submitted for crane operator and heavy mobile equipment repairer.

In support of his claim, appellant submitted medical reports dated January 6, 2011 through June 17, 2015 from Dr. Fred A. McLeod, a Board-certified otolaryngologist. In his January 6, 2011 report, Dr. McLeod reported that appellant complained of ringing in his ears as a result of industrial noise and machinery over the years. He diagnosed sensorineural hearing loss and tinnitus and recommended appellant wear hearing protection. In 2015 appellant complained of pressure in his left ear and the feeling that it was stopped up. He underwent left myringotomy with pressure equalizer tube placement on May 18, 2015. Dr. McLeod diagnosed chronic left otitis media, Eustachian tube dysfunction, bilateral sensorineural hearing loss, chronic resolved otitis externa, and allergic rhinitis.

Audiograms and hearing conservation data dated January 28, 2004 through August 3, 2015 were submitted. Audiometric testing dated January 28, 2004 revealed the following dB losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 5, 5, 20, and 30 for the right ear and 15, 10, 20, and 35 for the left ear.

The employing establishment reported that from 2004 to 2012, appellant was exposed to an average of 99.9 dB as a mechanic repairer with pneumatic tools ranging from 90 to 120 dB and grinding from 80 to 116 dB. From 2012 to 2015, appellant was exposed to an average of 88.7 dB as a crane operator with impact tools ranging from 85 to 120 dB and heavy equipment from 70 to 110 dB.

On October 1, 2015 OWCP referred appellant to Dr. Jack W. Aland, a Board-certified otolaryngologist, for a second opinion evaluation. It prepared a statement of accepted facts addressing his federal work history from 2004 to present and exposure to employment-related noise.

On October 14, 2015 appellant was examined by Dr. Aland. In his report, Dr. Aland noted that appellant had mild bilateral sensorineural hearing loss at the beginning of his federal career. When comparing the audiometric findings present at the beginning of his exposure, he reported that appellant did not show a sensorineural loss in excess of what would be normally predicated on the basis of presbycusis. Dr. Aland noted that appellant's workplace exposure was sufficient as to intensity and duration to have caused the hearing loss in question. He reported no other significant noise exposure and noted a left myringotomy tube placement. Audiometric testing performed that same date revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 5, 10, 25, and 35 for the right ear and 10, 10, 25, and 35 for the left ear. Speech reception thresholds were 15 dB bilaterally and word reception thresholds were 100 percent bilaterally. Dr. Aland diagnosed bilateral sensorineural hearing loss which he opined was not caused by appellant's federal employment because he had little decrease in hearing over the 11 years of his federal employment.

By decision dated November 3, 2015, OWCP found that the evidence of record failed to establish that appellant's hearing loss was causally related to the accepted employment factors.

On November 16, 2015 appellant requested reconsideration of OWCP's decision. In support of his claim, he resubmitted medical and factual evidence already of record.

In an undated narrative statement, appellant reported that a specific incident in April 2015 affected his hearing after an M88 tank backfired, causing a single loud noise while he was directly above it in his crane. He reported seeking emergency services that same date after he began to experience a popping sensation and became light headed and nauseous. Appellant reported that, even prior to this incident, he began to experience a threshold shift in his hearing from 2013 to 2014. He argued that Dr. Aland reported that the workplace exposure was sufficient as to intensity and duration to have caused the hearing loss in question which supported his occupational disease claim.

The only new medical evidence received was a December 3, 2015 report from Dr. McLeod. Dr. McLeod provided findings on physical examination and diagnosed Eustachian tube dysfunction, chronic otitis media, active stable Meniere's disorder, sensorineural hearing loss improving, and allergic rhinitis.

By decision dated March 18, 2016, OWCP denied modification of the November 3, 2015 decision, finding that the medical evidence of record failed to establish that his hearing loss was causally related to workplace noise exposure.

On June 10, 2016 appellant again requested reconsideration. In an accompanying narrative statement, he reported that two new medical reports, as well as a new audiologic evaluation, established his claim for hearing loss.

In an undated handwritten note, Dr. McLeod reported that appellant had mild-to-moderate high-frequency sensorineural hearing loss which could well be related to prior noise exposure. He explained that this noise exposure could be a result of prior work history and without hearing tests prior to, directly, or immediately after the exposure, it would be irresponsible to say with absolute certainty the cause of the hearing loss.

In an April 13, 2016 medical report, Dr. Beatrice Smith, a Board-certified otolaryngologist, reported that appellant had complained of decreased hearing loss since 2011 and presented for a second opinion evaluation. Audiometric testing performed that same date revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 10, 15, 30, and 40 for the right ear and 15, 5, 25, and 40 for the left ear. Speech reception thresholds were 20 dB on the right and 15 dB on the left and word reception thresholds were 100 percent bilaterally. Dr. Smith diagnosed mild-to-moderate high frequency bilateral sensorineural hearing loss.

By decision dated June 28, 2016, OWCP denied modification of its prior decision, finding that the evidence of record failed to establish that appellant's hearing loss was causally related to his federal workplace noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Michael R. Shaffer, 55 ECAB 386 (2004).

⁵ Marlon Vera, 54 ECAB 834 (2003); Roger Williams, 52 ECAB 468 (2001).

⁶ Beverly A. Spencer, 55 ECAB 501 (2004).

Appellant has the burden of establishing by weight of the reliable, probative and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.⁷ Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.⁸

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁰

ANALYSIS

OWCP accepted that appellant was exposed to hazardous employment-related noise at the Aniston Army Depot during his employment from February 2004 to present. The issue is whether he established employment-related hearing loss due to noise exposure during his federal employment. The Board finds that this case is not in posture for decision.¹¹

OWCP properly referred appellant to Dr. Aland, a Board-certified otolaryngologist, for a second opinion evaluation. Dr. Aland diagnosed bilateral sensorineural hearing loss, noting that appellant had mild bilateral sensorineural hearing loss at the start of his federal employment. He acknowledged that appellant's workplace exposure was sufficient as to intensity and duration to have caused the hearing loss in question. However, Dr. Aland reported that appellant's sensorineural hearing loss was not in excess of what would be normally predicated on the basis of presbycusis. He opined that appellant's bilateral sensorineural hearing loss was not due to his federal employment as there was little decrease in hearing over the 11 years of his federal civilian employment.

The Board finds that Dr. Aland's report is speculative and equivocal in nature and, thus, of little probative value.¹² Dr. Aland opined that appellant's hearing loss was due to presbycusis rather than noise exposure, noting little decrease in hearing over the past 11 years of federal employment. While he agreed that the workplace exposure was sufficient as to intensity and duration to have caused appellant's hearing loss, he did not explain why, despite the accepted

⁷ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁸ *See John W. Butler*, 39 ECAB 852, 858 (1988).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁰ *Phillip L. Barnes*, 55 ECAB 426, 441 (2004).

¹¹ *H.C.*, Docket No. 16-0740 (issued June 22, 2016).

¹² *Michael R. Shaffer*, 55 ECAB 386 (2004).

noise exposure, appellant's hearing loss was due to presbycusis, or why the occupational noise exposure apparently had no effect on appellant's hearing. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.¹³ OWCP's procedure manual provides that in cases involving a preexisting or underlying condition, a second opinion specialist should be asked to provide a rationalized opinion as to whether the preexisting or underlying condition was aggravated by employment factors and, if so, whether the aggravation was temporary or permanent.¹⁴ Dr. Aland's brief opinion on the issue of causal relationship lacks adequate medical rationale to support that appellant's hearing loss was not caused or contributed by his employment.¹⁵ OWCP did not seek clarification from Dr. Aland with regard to whether appellant's workplace noise exposure caused any aggravation of his condition.¹⁶

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.¹⁷ When OWCP selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.¹⁸ Because it referred appellant to a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether his hearing loss was caused or aggravated by his federal employment.¹⁹ Because Dr. Aland's opinion fails to provide a rationalized opinion on the cause of appellant's hearing loss, OWCP failed in having relied upon his opinion as a basis for denying appellant's claim for compensation.

On remand, OWCP should refer appellant together with an updated SOAF and complete medical record, to an appropriate second opinion physician for an opinion on whether appellant's work-related noise exposure caused or aggravated his hearing loss.²⁰ Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's occupational disease claim.

¹³ A.D., 58 ECAB 149 (2006).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(e) (September 2010).

¹⁵ D.F., Docket No. 09-1080 (issued December 7, 2009).

¹⁶ When it refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues. See *Ayanle A. Hashi*, 56 ECAB 234 (2004) (when OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues); *Mae Z. Hackett*, 34 ECAB 1421 (1983) (where OWCP referred appellant to a second opinion physician, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

¹⁷ P.K., Docket No. 08-2551 (issued June 2, 2009).

¹⁸ *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

¹⁹ See *Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

²⁰ S.E., Docket 08-2243 (issued July 20, 2009).

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant developed bilateral sensorineural hearing loss causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: January 9, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board